

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STEPHANIE L. PICKERING and TERRY A.  
O'KEEFE,

Plaintiffs,

v.

BANK OF AMERICA HOME LOANS, *et al.*,

Defendants.

Case No. C15-1983 RSM

ORDER GRANTING DEFENDANT  
QUALITY LOAN SERVICE  
CORPORATION OF WASHINGTON'S  
MOTION TO DISMISS

**I. INTRODUCTION**

This matter comes before the Court on Defendant Quality Loan Service Corporation of Washington ("QLS")'s Second Motion to Dismiss pursuant to Rule 12(b)(6). Dkt. #26. QLS argues that Plaintiffs' Amended Complaint fails to allege any facts to support the claims brought against QLS and thus fails to state a claim upon which relief can be granted. Plaintiffs oppose this Motion. Dkt. #29. For the reasons set forth below, the Court agrees with Defendant QLS and GRANTS its Second Motion to Dismiss with prejudice.

**II. BACKGROUND<sup>1</sup>**

The Court need not recite all the facts of the case for purposes of this Motion and will focus on the facts related to movant QLS.

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<sup>1</sup> Except as otherwise noted, the following background facts are taken from Plaintiffs' Amended Complaint, Dkt. #22, and accepted as true for purposes of ruling on this Motion to Dismiss.

1 Plaintiffs Stephanie L. Pickering and Terri A. O’Keefe bring this action against  
2 Defendants Bank of America Home Loans, Bank of America, N.A., QLS, Mortgage Electronic  
3 Registration System (“MERS”) and Does 1-10 under several causes of action for mishandling  
4 of Plaintiffs’ loan modification application. Dkt. #22.

5 Plaintiffs’ original Complaint was filed on December 16, 2015. Dkt. #1. On March 3,  
6 2016, Defendant QLS filed a Motion nearly identical to the instant Motion, seeking dismissal  
7 of claims against it under Rule 12(b)(6). Dkt. #10. On May 26, 2016, the Court granted QLS’  
8 Motion, dismissed Plaintiffs’ claims against QLS without prejudice, and granted Plaintiffs  
9 leave to amend their Complaint to rectify the factual deficiencies described in the Order. Dkt.  
10 #18. Plaintiffs filed their Amended Complaint on June 16, 2016. Dkt. #22.

11 Plaintiffs allege in their Amended Complaint that they executed a negotiable  
12 promissory note and a security interest in the form of a deed of trust in the amount of \$210,000  
13 in favor of Golf Savings Bank/JP Morgan Chase in July of 2008. *Id.* at 6. Plaintiffs refinanced  
14 and executed a negotiable promissory note and a security interest in the form of a Deed of Trust  
15 in the amount of \$207,000 to Defendant Bank of America Home Loans. Plaintiffs experienced  
16 financial difficulties and appear to have defaulted on their mortgage in July of 2011. *Id.*  
17 Plaintiffs contacted Defendant Bank of America, N.A. and requested mortgage assistance,  
18 instead they entered into a “Special Forbearance Agreement.” *Id.* at 7. Plaintiffs allege that  
19 they satisfied this agreement and qualify for a loan modification. *Id.* Instead, Bank of America  
20 N.A. “is threatening foreclosure” and state that Plaintiffs owe \$72,769.02. *Id.* at 8.

21 The Amended Complaint asserts that QLS “is a trustee service.” *Id.* at 3. The  
22 Amended Complaint goes on to state under its Violation of Fair Debt Collection Practices Act  
23 (“FDCPA”) cause of action that QLS “does not have the authority to collect payments and or  
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1 threaten to foreclose on Plaintiff's real property," but has "schedule[d] a Trustee sale date of  
 2 January 29, 2016 despite their lack of authority to do so." *Id.* at 11. Plaintiffs fail to allege any  
 3 other facts specifically related to QLS in their Amended Complaint.

### 4 **III. DISCUSSION**

#### 5 **A. Legal Standard**

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 7 In making a Rule 12(b)(6) assessment, the court accepts all facts alleged in the  
 8 complaint as true, and makes all inferences in the light most favorable to the non-moving party.  
 9 *Baker v. Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations  
 10 omitted). However, the court is not required to accept as true a "legal conclusion couched as a  
 11 factual allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*  
 12 *Twombly*, 550 U.S. 544, 555 (2007)). The complaint "must contain sufficient factual matter,  
 13 accepted as true, to state a claim to relief that is plausible on its face." *Id.* at 678. This  
 14 requirement is met when the plaintiff "pleads factual content that allows the court to draw the  
 15 reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The  
 16 complaint need not include detailed allegations, but it must have "more than labels and  
 17 conclusions, and a formulaic recitation of the elements of a cause of action will not do."  
 18 *Twombly*, 550 U.S. at 555. Absent facial plausibility, a plaintiff's claims must be dismissed.  
 19 *Id.* at 570.

#### 22 **B. Request for Judicial Notice**

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 24 As an initial matter, QLS asks the Court to take judicial notice of certain public records  
 25 outside the pleading materials. Dkt. #26 at 2 (citing *Chapel v. Mortg. Elec. Registration Sys.*,  
 26 2010 U.S. Dist. LEXIS 143524, \*6-7 (W.D. Wash. Nov. 2, 2010) ("the Court may take judicial  
 27 notice of public records when considering a 12(b)(6) motion to dismiss"). These documents  
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are listed as: Deed of Trust, recorded 4/30/2009 under Skagit County Auditor instrument number 200904300138; Assignment of Deed of Trust in favor of Bank of America, N.A., recorded 11/3/2011 under Skagit County Auditor instrument number 201111030055; Appointment of Successor Trustee appointing Quality Loan Service Corporation of Washington, recorded 8/6/2015 under Skagit County Auditor instrument number 201508060023; and Notice of Trustee's Sale, recorded 10/1/2015 under Skagit County auditor number 201510010057. *Id.* at 3. These documents are attached to the Motion at Dkt. #26-1. The Court finds that it need not examine these documents to reach the ruling below and will defer its ruling.

### **C. Factual Amendments to Complaint**

QLS begins by arguing:

The Amended Complaint runs twenty (20) pages, containing no assertion of fact as to any specific conduct of QLS. Indeed, absent a statement conceding QLS' status as a trustee service that operates, and therefore has a presence in the State of Washington, there is no reference at all to QLS in the alleged facts. The only allegation against QLS is found within a listed cause of action in paragraph 29, which is word-for-word identical to the same sole allegation against QLS in the initial complaint. Within this paragraph, Plaintiff makes a conclusory assertion that QLS did not have authority to collect payments or threaten to foreclose on property, and that QLS scheduled a Trustee's Sale lacking authority. As QLS's motion to dismiss was granted based upon Plaintiffs' failure to assert these basic factual allegations, Plaintiffs have failed to cure the defect that was fatal to their initial complaint.

Dkt. #26 at 2.

Plaintiffs respond with a brief identical to previous brief responding to QLS' Motion to Dismiss, with the addition of section "C" addressing whether leave to amend should be granted again. *See* Dkt. ##11, 29. Plaintiffs' brief even includes the same fragment sentence on page 6, "Defendant QLS have conducted abusive collection practices towards," Dkt. #29 at 6, pointed

1 out in the Court's prior Order. Plaintiffs fail to respond to QLS' point above—that there are no  
2 new factual assertions correcting the deficiencies noted by the Court's prior Order.

3 On Reply, QLS makes the same arguments as its prior Reply in support of its prior  
4 Motion to Dismiss. Dkt. #30. QLS also argues that Plaintiffs' Response "appears to be nearly  
5 identical, verbatim, to their previous opposition to Defendant QLS's Motion to Dismiss,  
6 introducing no new legal arguments whatsoever." *Id.* at 3. QLS concludes with the following:  
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8 Plaintiffs allege that this Court should look to the substance of  
9 their complaint rather than the form. Fatal to their argument,  
10 though, is that their Amended Complaint contains no substantial  
11 allegations against QLS whatsoever; indeed, their Amended  
12 Complaint contains even fewer factual allegations as to QLS than  
13 their initial Complaint. As Plaintiffs have failed to avail themselves  
of their opportunity to cure the paucity of facts alleged in their  
initial Complaint, which resulted in its dismissal, this Court should  
not grant them a third opportunity.

14 *Id.* at 6.

15 The Court agrees and finds that Plaintiffs have failed to adequately amend their  
16 Complaint to address the factual deficiencies described in the Court's prior Order, Dkt. #18.  
17 Plaintiffs add no new factual background linking QLS to the causes of action against it, instead  
18 relying on insufficient "labels and conclusions" and "formulaic recitation of the elements of a  
19 cause of action," which previously failed and continue to fail to meet the Rule 12(b)(6)  
20 standard. *See* Dkt. #18 (setting forth grounds to dismiss these same claims); *Twombly*, 550  
21 U.S. at 555. Accordingly, all of Plaintiffs' claims against Defendant QLS must be dismissed.  
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#### 24 **D. Request for Attorney's Fees**

25 The Court notes that QLS again requests an award of attorney's fees "pursuant to the  
26 underlying Deed of Trust." Dkt. #30 at 6. No further explanation or analysis is offered. The  
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1 Court will deny this request at this time and direct Defendant QLS to file a separate Motion for  
 2 Attorney's Fees setting forth the legal arguments and factual support for such a Motion.

### 3 **E. Leave to Amend**

4 Where a complaint is dismissed for failure to state a claim, "leave to amend should be  
 5 granted unless the court determines that the allegation of other facts consistent with the  
 6 challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-*  
 7 *Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

9 Plaintiffs argue in Section C of their Response that "[a] pro se plaintiff's pleadings and  
 10 filings are liberally construed and are held to a less stringent standard than documents drafted  
 11 by attorneys." *Id.* at 8 (citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Hamilton v. Brown*,  
 12 630 F.3d 889, 893 (9th Cir. 2011). Even holding Plaintiffs to this less stringent standard, given  
 13 Plaintiffs' inability to cure the factual deficiencies identified in the Court's prior Order, the  
 14 Court finds that further amendment could not possibly cure the deficiency and that leave to  
 15 amend is not warranted.  
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## 17 **IV. CONCLUSION**

18 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,  
 19 and the remainder of the record, the Court hereby finds and ORDERS:  
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- 21 1) Defendant Quality Loan Service Corporation of Washington's Motion to Dismiss  
 22 (Dkt. #26) is GRANTED.
- 23 2) Plaintiffs' claims against QLS are dismissed with prejudice.
- 24 3) Defendant Quality Loan Service Corporation of Washington may file a Motion for  
 25 Attorney's Fees, setting forth the legal and factual basis for those fees, no later than  
 26 **fourteen (14) days** from the date of this Order. This Motion shall be limited to five  
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1 (5) pages and supported by documentary evidence reflecting the amount of fees  
2 sought. Plaintiffs may file a Response no later than the noting date of Defendant's  
3 Motion and this Response shall be limited to five (5) pages. No Reply is permitted.  
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5 DATED this 18<sup>th</sup> day of August 2016.  
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9 RICARDO S. MARTINEZ  
10 CHIEF UNITED STATES DISTRICT JUDGE  
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